

**Virginia Department of Education  
Division of Special Education and Student Services**

**GUIDANCE DOCUMENT  
REQUIRED MODIFICATIONS TO  
LOCAL POLICIES AND PROCEDURES**

**November 2005**

This Guidance Document serves to identify additions which each local educational agency (LEA) must make to their local policies and procedures in order to comply with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA '04), and the annual plan process.

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**8 VAC 20-80-40      Responsibility of the Local LEAs and State-Operated Programs**  
[See IDEA '04 § 1412(a)(11)(A)(iii), 1412(a)(24), and 1412(a)(25).]

Each LEA must ensure the following additional provisions:

- When carrying out the requirements of IDEA '04 with respect to homeless students, the requirements of Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.) must be met.
- Policies and procedures will be in effect which are designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

- A student with a disability will not be required to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation, or receiving services. However, teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

**8 VAC 20-80-45      Special Education Staffing Requirements**  
 [See IDEA '04 §§ 1412(a)(14) and 1413(a)(3).]

Each LEA must ensure that special education and related service personnel, including paraprofessionals, must be “appropriately and adequately prepared and trained.” This includes:

- Ensuring that those personnel have the content knowledge and skills to serve children with disabilities;
- Ensuring that each person employed as a special education teacher for K-12 instruction is highly qualified by July 1, 2006; and
- Taking “measurable steps” to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to student with disabilities.

Note: The requirements regarding the development and implementation of a comprehensive system of personnel development (CSPD) have been removed.

**8 VAC 20-80-50      Child Find**  
 [See IDEA '04 § 1412 (a)(3).]

Each LEA must ensure that all children with disabilities, birth to age 21, who are in need of special education and related services, are identified, located, evaluated, and a determination made regarding whether or not the child is currently receiving needed special education and related services, including children:

- Who reside within the jurisdiction of the LEA, including wards of the state, who are not home-schooled or attending a private school; and
- Who attend a home-school or private school which is located within the geographic boundaries of the LEA.

**8 VAC 20-80-52      Referral for Evaluation**

[See IDEA '04 §§ 1412 (a)(7) and 1414(a)(1)(B).]

Each LEA must ensure that any of the following may initiate a request for an initial evaluation to determine a student's eligibility for special education and related services: A parent, a LEA, VDOE, or any other state agency.

**8 VAC 20-80-54      Evaluation**

[See IDEA '04 §§ 1412(a)(7) and 1414(a)-(c).]

Each LEA must ensure the following additional provisions regarding the evaluation process:

- Evaluations are completed within the mandated requirements, unless:
  - A student transfers from one LEA to another after the evaluation process has been initiated, but prior to an eligibility determination being made. In such cases, if “sufficient progress” is being made to ensure a “prompt completion” of the evaluation, the parent and the student’s new LEA may agree to a specific time by which the evaluation will be completed, which may be beyond the 65 business day timeframe. However, the prior and subsequent LEA are required to coordinate their efforts, as “expeditiously as possible,” to ensure “prompt completion” of the evaluations.
  - The parent “repeatedly fails or refuses” to produce the child for evaluation.
- Each student with a disability will be reevaluated at least once every three years unless the parent and the LEA agree that a reevaluation is unnecessary.
- Each student with a disability will not be reevaluated more than once each year unless the LEA and the parent agree otherwise.
- No single measure or assessment may be the sole criterion for determining whether or not a student is eligible for special education and related services, or for determining an appropriate educational program for a child with a disability.
- A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information, including information provided by the parent to determine whether the child is a child with a disability, and the

content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities.

- Each assessment and other evaluation material must be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
- As part of each evaluation or reevaluation, the following will occur:
  - A review of existing data, including evaluations and information provided by the parent, current classroom-based, local, or State assessments, classroom-based observations, and observations by teachers and related service providers; and
  - A determination, based on the information review and parental input, what if any additional data is necessary to determine:
    - ❖ Whether the child is, or continues to be a child with a disability, and the educational needs of the child; and
    - ❖ The child's present levels of academic achievement, and related developmental needs;
- If no additional data is needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the LEA must notify the child's parents of that determination, and its basis, and the right of the parent to request an assessment to determine whether the child continues to be a student with a disability and to determine the child's educational needs.

**8 VAC 20-80-56      Eligibility**  
[See IDEA '04 §§ 1412(a)(7), and 1414(b)(4) and (b)(5).]

Each LEA must ensure the following additional provisions regarding the eligibility determination process:

- A child will not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in reading, including in the essential components of reading instruction (including phonemic awareness,

phonics, vocabulary development, reading fluency, oral reading skills, and reading comprehension strategies), a lack of instruction in math, or due to limited English proficiency.

- The LEA has policies and procedures for determining whether or not a student is eligible for special education and related services as a student with a Specific Learning Disability.

Note: A LEA is not required to determine a student's eligibility as a student with a specific learning disability based upon whether or not the student has a severe discrepancy between achievement and intellectual ability in one of the following areas: Oral expression; listening comprehension; written expression; basic reading skill; reading comprehension; mathematical calculation; or mathematical reasoning. Rather, the LEA may opt to use a process that determines whether or not the student responds to scientific, research-based intervention methods as part of the evaluation process.

#### **8 VAC 20-80-58 Termination of Special Education and Related Services**

[See IDEA '04 §§ 1412(a)(7) and 1414 (c)(5).]

Each LEA must ensure that prior to a child's graduation with an advanced or standard diploma, or exceeding the age of eligibility, the student will receive a "summary of the child's academic achievement and functional performance," including recommendations on how to assist the child in meeting his/her post-secondary goals.

#### **8 VAC 20-80-60 Free Appropriate Public Education (FAPE)**

[See IDEA '04 § 1412(a)(1).]

There are no required modifications in this area.

#### **8 VAC 20-80-62 Individualized Education Program (IEP)**

[See IDEA '04 §§ 1412(a)(4) and 1414(d) and (f).]

Each LEA must ensure the following additional provisions regarding the development, review, revision, and implementation of a student's IEP or Individualized family service plan (IFSP):

- Each student's IEP includes:
  - A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
  - A statement of measurable annual goals, including academic and functional goals, designed to
    - ❖ Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    - ❖ Meet each of the child's other educational needs that result from the child's disability;
  - For children with disabilities who participate in the Virginia Alternate Assessment Program (VAAP), a description of benchmarks or short-term objectives;
  - A description of (1) how the child's progress toward meeting the annual IEP goals will be measured and (2) when periodic reports regarding the child's progress toward annual IEP goals will be provided;
  - A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child, as currently required; and
  - Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter
    - ❖ Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
    - ❖ The transition services (including courses of study) needed to assist the child in reaching those goals; and
- Each IEP team includes all currently required individuals, including the parent, unless:
  - The LEA and the parent agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related service is not being modified or discussed during the IEP meeting; or

- The LEA and the parent agree in writing to excuse the member from the IEP meeting, in whole or in part, because even though the member's area of the curriculum or related service is being modified or discussed during the IEP meeting, the member has submitted written input regarding the development of the student's IEP prior to the meeting.
- During the development of a child's IEP, the IEP team must consider, in part, the academic, developmental and functional needs of the student.
- To the extent possible, the LEA will encourage the consolidation of meetings convened on the child's behalf.
- Each child's IEP is reviewed at least annually. However, an IEP may be amended during the year, after the annual review, without a new meeting if the parent and the LEA agree to do so. However, the amendment or modification must be in writing, and the LEA should document the amendment did not necessitate an IEP meeting.
- Following a request to do so, a parent must be provided with a revised copy of a student's IEP with the amendments incorporated.
- If a student with a disability transfers to a Virginia LEA, the receiving LEA must take reasonable steps to promptly obtain all of the child's educational records, including the IEP, from the previous LEA; and the sending LEA must take reasonable steps to promptly respond to such requests for records.
- If neither parent can attend an IEP meeting, the LEA must use other methods to ensure parent participation, including videoconference, or individual or conference telephone calls.

**8 VAC 20-80-64      Least Restrictive Environment and Placements**  
[See IDEA '04 § 1412(a)(5). ]

There are no required modifications in this area.

**8 VAC 20-80-65      Placement of Children at the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton**  
[See Code of Virginia, at § 22.1-348.]

There are no required modifications in this area.

**8 VAC 20-80-66      Private School Placements**  
[See IDEA '04 § 1412(a)(10).]

To the extent consistent with the number and location of the students with disabilities who are who are enrolled by their parents in private elementary and secondary schools, which are located within the LEA, the LEA must provide for the student's participation in special education and related services in accordance with the requirements outlined below:

- The LEA must conduct a “thorough and complete child find process” to determine the exact number of parentally placed private school children, who are attending private schools located within the LEA. This process must ensure “equitable participation” by each of these students, provide an accurate count of such students, and include activities, which are completed in a comparable time period as, and which are similar to, those undertaken on behalf of public school students. However, the money spent on the child find process, including individual evaluations may not be considered when determining whether or not the LEA has expended the proportionate amount, as required by IDEA '04.
- Prior to the child find process, and during the design and development of special education and related services for parentally placed private school students, the LEA must complete “timely and meaningful consultation” with representatives of both the private schools, and of the parents of parentally-placed private school students regarding the following:
  - The child find process, including how these students can participate equitably in the process, and how parents, teachers, and private school officials will be informed of the process;
  - The determination of the proportionate amount of federal funds available to serve these students, including the determination of how the amount was calculated;
  - The consultation process, including how the process will operate throughout the school year to ensure that parentally placed private school children with disabilities, who are identified through the child find process, can “meaningfully participate” in special education and related services;



- How, where, and by whom special education and related services will be provided to these students, including the types of services (ie. direct or alternative service delivery mechanisms), and how such services will be apportioned if funds are insufficient to serve all children, including how and when these decisions will be made; and
  - If a disagreement arises between the LEA and the private school representatives regarding the provision of services, or the types of services provided, the LEA will provide the private school representatives with a written explanation of the reasons the LEA opted not to provide services either directly or through a contract.
- Once “timely and meaningful consultation” has occurred, the LEA must obtain a written affirmation of the process, which has been signed by the participating private school representatives. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward documentation of the consultation to VDOE.
  - If the LEA does not engage in timely and meaningful consultation, or if the LEA fails to give “due consideration” to the views of the private school representatives, a private school representative may file a State complaint with VDOE. If the private school representative is dissatisfied with the outcome of the state complaint process, the complaint may be submitted to the Secretary of Education at USDOE for review.
  - The services provided by a LEA to parentally-placed private school students may be provided by either the LEA’s employees or through contracted provider, and such service, including materials and equipments must be secular, neutral, and nonideological. These services may be provided to the children on the premises of private, including religious, schools to the extent consistent with law.
  - Each LEA must maintain for its records, and submit to VDOE the following: the number of parentally placed private school students evaluated, the number of students determined eligible for special education and related services, and the number of students actually served.

**8 VAC 20-80-68      Discipline Procedures**  
 [See IDEA '04 §§ 1412(a)(6) and 1415(j) and (k).]

Each LEA must ensure the following additional provisions regarding discipline:

- School personnel are permitted to consider any unique circumstances on a case-by-case basis when deciding whether or not to remove a student with a disability long term from a current educational placement as a result of a violation of the code of conduct.
- Within 10 school days of a decision to change the placement/initiate a long-term removal of a child with a disability due to a violation of the code of conduct, the LEA must convene a manifestation determination review (MDR) meeting. During the meeting, the committee must review all relevant information from the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent, to determine whether or not the child's behavior was a manifestation of the child's disability. A behavior will be considered a manifestation of the student's disability if:
  - The conduct was caused by, or had a "direct and substantial relationship" to, the child's disability; or
  - The conduct was the "direct result" of the LEA's failure to implement the student's IEP.
- A student may be removed for not more than 45 school days to an interim alternative education setting (IAES), if the student, while at school, on school premises, or at a school function, inflicts "serious bodily injury" upon another person, regardless of whether or not the behavior is a manifestation of the student's disability.
- During an expedited hearing in which a parent disagrees with the determination that that student's behavior was not a manifestation of the student's disability, or with any decision regarding the student's disciplinary placement, the student must remain in the disciplinary placement pending the decision of the hearing officer, or the expiration of the disciplinary removal, whichever occurs first, unless the parent and the LEA agree otherwise.
- An expedited due process hearing must occur within 20 school days of the date the hearing is requested, and the determination must be issued within 10 school days following the hearing.
- A LEA is not deemed to have had a "basis of knowledge" if:
  - The parent has not allowed the student to be evaluated to determine eligibility for special education and related services; and
  - The parent has refused to consent for the child's receipt of special education and related services.

Note: A "basis of knowledge" is no longer triggered when "the behavior or performance of the student demonstrates the need for" special education and related services.

## **8 VAC 20-80-70      Procedural Safeguards**

[See IDEA '04 § 1412(a)(6); § 1414(a)(1)(D); § 1415(a)-(d); § 1415(n).]

Each LEA must ensure the following additional provisions regarding the procedural safeguards:

- A copy of the procedural safeguards document must be provided to a parent of a child with a disability as follows: At least one time per year; upon initial referral or parental request for evaluation; when a request for a due process hearing is filed; and if the parent requests a copy.

Note: A LEA may place a current copy of the procedural safeguards notice on its website.

- The procedural safeguards notice shall include a full explanation of the following procedural safeguards, written in the native language of the parents (unless not feasible to do so):
  - The opportunity to present and resolve complaints, including the time period in which to make a complaint, the opportunity for the agency to resolve the complaint, and the availability of mediation; and
  - Civil actions, including the time period in which to file such actions.
- If a parent fails to provide consent for an initial evaluation, or to respond to a request to provide consent, the LEA may use a due process hearing to pursue the initial evaluation.
- If a parent fails to provide consent for the initial provision of services, a due process hearing cannot be used to secure parental consent. However, if the parent does not provide consent for the provision of services, a LEA will not be considered to have failed to provide FAPE to the child, and will not be required to convene an IEP meeting.
- Consent is not required for a teacher or specialist to conduct a screening to determine appropriate instructional strategies for curriculum implementation, as such a screening is not considered an evaluation.
- If a child is a ward of the state and is not residing with a parent, a LEA must make “reasonable efforts” to obtain informed consent from a parent for an initial evaluation to determine the child’s eligibility for special education and related services, unless:
  - Despite reasonable efforts, the LEA cannot discover the parent’s whereabouts;

- The parent's rights have been terminated; or
- The rights of the parent to make educational decisions have been subrogated under state law and consent for the initial evaluation has been given by the individual appointed by the judge to represent the child.

**8 VAC 20-80-70 G. Confidentiality of Personally Identifiable Information**

[See IDEA '04 §§ 1412(a)(8) and 1417(c).]

There are no required modifications in this area.

**8 VAC 20-80-72 Transfer of Rights to Students Who Reach the Age of Majority**

[See IDEA '04 § 1415(m).]

There are no required modifications in this area.

**8 VAC 20-80-74 Mediation**

[See IDEA '04 §§ 1415(b)(5) and 1415(e).]

Each LEA must ensure the following additional provisions regarding mediation:

- Parties are allowed to resolve disputes regarding special education and related services, including matters arising prior to the filing of a request for a due process hearing, through the mediation process.
- If a resolution is reached via the mediation process, a written mediation agreement will be developed, which will be legally binding, and enforceable in any State court of competent jurisdiction or in a federal district court;

## **8 VAC 20-80-76      Due Process Hearing**

[See IDEA '04 §§ 1412(a)(6), 1415(b)(6)-(b)(8), 1415(c)(2), and 1415(f)-(i).]

Each LEA must ensure the following additional provisions regarding due process:

- Within two years of the date that the parent or LEA knew or should have known about an alleged action, a parent or LEA may request a due process hearing based on the action, unless the parent was prevented from requesting the due process hearing due to specific misrepresentations made by the LEA that the problem, which is the basis of the due process request, had been resolved, or the LEA withheld information from the parent that the LEA was required to provide to the parent.
- A notice requesting a due process hearing must be provided to the other party and to VDOE, and it must include the following elements:
  - The name and address of the child, or in the case of a homeless child or youth, available contact information;
  - The name of the school the child is attending;
  - A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
  - A proposed resolution of the problem to the extent known and available to the party at the time of the due process request.

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the due process complaint notice, unless the other party agrees otherwise.

- The party requesting the due process hearing may not have a hearing until a notice with all required elements is filed. However, the due process complaint notice is deemed to be sufficient unless, within 15 days of receiving the notice, the non-complaining party notifies the hearing officer and the complaining party in writing that the notice is insufficient. A challenge to the sufficiency of the notice suspends the timeline for completion of a due process hearing. Once the non-complaining party notifies the hearing officer that the notice is insufficient, the hearing officer must make a determination regarding the notice's sufficiency within five days, and notify the parties immediately in writing. If the notice is sufficient, the applicable timeline recommences.
- The complaining party may amend its due process complaint notice only if:

- The other party provides written consent to the amendment and is given the opportunity to resolve the complaint via the Resolution Session; or
- The hearing officer grants permission not later than five days before the due process hearing occurs.

Once an amended notice is filed, the applicable timelines for the due process hearing will recommence.

- Within 10 days of receiving the due process complaint notice, the non-complaining party must provide a response that specifically addresses the issues raised in the notice. However, if the LEA has not sent the parent prior written notice regarding the subject matter contained in the parent's due process complaint notice, the LEA must, within 10 days, send to the parent a response that includes the following:
  - An explanation of why the agency proposed or refused to take the action raised in the complaint;
  - A description of other options that the IEP Team considered and the reasons why those options were rejected;
  - A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
  - A description of the factors that are relevant to the agency's proposal or refusal.
- Within 15 days of receiving the due process complaint notice, the LEA must convene a Resolution Session with the parents and the relevant members of the student's IEP team who have specific knowledge of the facts identified in the due process complaint notice. This group must include a representative of the LEA who has decision-making authority. The LEA's attorney may not be included unless the parent is accompanied by an attorney. The purpose of the meeting is to discuss the issues raised in the due process complaint notice, and to provide the LEA the opportunity to resolve the complaint.
- If during the Resolution Session an agreement to resolve the complaint is achieved, the parties must execute a legally binding agreement which is signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and which is enforceable in any Virginia court of competent jurisdiction or in federal district court. Either party may void the agreement within three business days.
- The Resolution Session may be waived if both parties agree to do so in writing, or agree to participate in mediation. If it is waived, the applicable timeline continues. Otherwise, the applicable timeline is suspended.

- If the LEA has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint notice, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.
- The LEA complies with the VDOE’s responsibilities for the following:
  - Appointment of an approved hearing officer; and
  - Ensuring the hearing officer’s decision and the management of the hearing comports with the federal and state mandates.
- A hearing officer’s decision is final unless appealed to federal district court within 90 days, or to a Virginia court of competent jurisdiction within one year.

#### **8 VAC 20-80-78      Complaint Procedures**

There are no required modifications in this area.

#### **8 VAC 20-80-80      Surrogate Parent Procedures** [See IDEA '04 § 1415(b)(2).]

Each LEA must ensure the following additional provisions regarding surrogate parents:

- If the student is a ward of the state, the surrogate parent may be appointed by the judge overseeing the child’s care if the appointed surrogate otherwise meets the requirements.
- If the student is an “unaccompanied homeless youth,” as defined by the McKinney-Vento Homeless Assistance Act, the LEA must appoint a surrogate parent.
- Reasonable efforts must be made to ensure the assignment of a surrogate parent not more than 30 days after the determination that a surrogate is needed.

**Full Education Opportunity Goal**

[*See* IDEA '04 § 1412(a)(2).]

There are no required modifications in this area.